Supreme Court, U. S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-458

DESOTO PARISH SCHOOL BOARD, ET AL.,
Petitioners.

VERSUS

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

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To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above entitled case on June 2, 1978, rehearing denied August 2, 1978, stay of mandate pending certiorari granted August 17, 1978.

CITATIONS TO OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Louisiana is unreported and appears herein as Appendix A. The opinion of the Court of

Appeals for the Fifth Circuit was rendered June 2, 1978, is reported at 574 F2d 804, and appears herein as Appendix B.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on June 2, 1978. A timely application for rehearing was denied on August 2, 1978 and appears herein as Appendix C. By Order issued August 17, 1978 the Court of Appeals granted a Stay of Mandate pending the filing of this petition for writ of certiorari to and including September 16, 1978, such Order appearing herein as Appendix D. By Order issued September 5, 1978 the Court of Appeals denied the motion of the United States to vacate its order of August 17, 1978 granting such Stay of Mandate, such Order appearing herein as Appendix E. This petition for certiorari has been filed prior to the September 16, 1978 date established by the Court of Appeals for Stay of Mandate and within 90 days of the August 2, 1978 denial of rehearing. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals err (1) in reversing the decision of the District Court with regard to this small rural school system and (2) in remanding to the District Court with instructions which virtually limit the District Court to pairing of all schools?

STATUTORY PROVISIONS

Amendment XIV, Section 1 of the Constitution of the United States.

42 U.S.C. 2000 (c) (6).

STATEMENT OF THE CASE

This school desegregation action was originally filed by the United States in January, 1967 pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000(c-6). During the ensuing years there were various proceedings in the District Court as new interpretations of constitutional requirements were enunciated by decisions of this Court and the Court below which resulted in the final order of the District Court of January 30, 1970 ordering implementation of a new desegregation plan arrived at by the District Court after consideration of plans submitted both by the DeSoto Parish School Board and the Department of Health, Education and Welfare of the United States Government, requiring same to be implemented by February 1, 1970. Neither the United States nor the DeSoto Parish School Board appealed from that January, 1970 order of the District Court and the school system has operated in accordance with that order until the present complaint of the United States was filed on July 15, 1975.

The present motion for further relief filed by the United States on July 15, 1975 resulted from a complaint filed with the Justice Department regarding the failure of the DeSoto Parish Police Jury to rebuild a bridge, something that had nothing whatsoever to do with the DeSoto Parish School Board and its operation of the school system. In fact, during the five years between the District Court's 1970 order and the present motion of the United States, no citizen, black or white, has complained to anyone with regard to the operation of the DeSoto Parish school system. Furthermore, after the Justice Department contacted the Superintendent of Schools

with regard to the possibility that the United States would file a motion for further relief, the officers of three black civic and political organizations in DeSoto Parish, the Cavaliers Club, the NAACP, and the DeSoto Parish Voters League, wrote the Justice Department advising them that they had no objection or complaint with the DeSoto Parish school system and requesting the Justice Department to take no further action.

It should also be noted in this regard that the DeSoto Parish School Board was reapportioned in 1971 and subsequent elections resulted in three black citizens being elected to the Board where they are presently serving. When the Government's motion for further relief was filed in July, 1975, the School Board voted *unanimously* to oppose the Government's motion. We would point out also that both prior to the decision of the Court below, and subsequently, a contingent of both white and black citizens and both white and black School Board members have gone to Washington to plead with the Justice Department, all to no avail.

DeSoto Parish is a geographically large, sparsely populated, rural area of north Louisiana. It is bounded on the north by the metropolitan area of Caddo Parish (Shreveport, Louisiana). It presently operates only eleven schools with a total of 5,549 students as of the present 1978-79 school year. Of this total, 2,381 are white and 3,168 are black for a racial ratio of 43% white and 57% black.

Stonewall High School is located in the extreme upper northwest corner of the Parish in a predominantly white residential area. Coming south and east, the next school is Second Ward High School, located in the north

central portion of the Parish in a predominantly black residential area with a decreasing population. Continuing south we come to the largest town in the Parish, the town of Mansfield, located in the center of the Parish, and in which four schools are located. Moving southwest we find Stanley High School approximately midway between Mansfield and the Parish line and on the extreme southwest corner of the Parish the town of Logansport with two schools, Logansport High School and Rosenwald High School. Then, in the extreme southeast corner of the Parish there are two schools, one elementary and one high school, serving the entire southeast section of the Parish.

The number of students by race in each school and the grade level served by such school according to present 1978-79 enrollment figures are set forth below:

School	*Grade Level Served*	*Enrollment* *Black*	*White*	*Percentage* *Black*	*White*
All Saints-Pelican Elementary	K-6	159	50	76	24
DeSoto High School	7-12	607	0	100	0
Johnson Elementary School	K-6	699	0	100	0
Logansport High School	K-12	75	607	11	89
Logansport Rosenwald High	K-12	317	2	99	1
Mansfield Elementary	K-7	274	581	32	68
Mansfield High School	8-12	166	368	31	69
Pelican-All Saints High	7-12	160	46	78	22
Second Ward High School	K-12	527	1	99.9	.1
Stanley High School	K-12	70	267	21	79
Stonewall High School	K-12	114	459	20	80

The enrollment figures for prior years are set forth in the Appendix to the opinion of the Court below, appearing as Appendix B in this petition.

REASONS FOR GRANTING THE WRIT

The decision of the Court below, although it attempts to distinguish this Court's recent decision in

Dayton Board of Education v. Brinkman, U.S. , 53 L.Ed.2d 851, 97 S.Ct. (June 27, 1977), does not give sufficient consideration to the import of, and limitations established, in fashioning desegregation plans, to that decision of this Court or to other recent decisions of this Court in *Pasadena City Board of Education v. Spangler*, 427 U.S. 424, 49 L.Ed.2d 599, 96 S.Ct. 2697 (1976); *Washington v. Davis*, 426 U.S. 229, 48 L.Ed.2d 597, 96 S.Ct. 2040 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, U.S. , 50 L.Ed.2d 450, 97 S.Ct. 555 (1977); *Milliken v. Bradley*, 418 U.S. 717, 41 L.Ed.2d 1069, 94 S.Ct. 3112; and *Austin Independent School District v. United States*, U.S. , 50 L.Ed. 603, S.Ct. (1977) to such an extent as to require review by this Court.

The decision of the Court of Appeals in this case also appears to be in conflict with other decisions of that Court such as *Carr v. Montgomery County Board of Education*, 377 F.Supp. 1123, affirmed 511 F.2d 1374 (5th Cir.) rehearing and rehearing en banc denied, cert. denied, 96 S.Ct. 397, 423 U.S. 986, 46 L.Ed.2d 303, *Calhoun v. Cook*, 522 F.2d 717, rehearing and rehearing en banc denied, 525 F.2d 1203 and *Bush v. Orleans Parish School Board*, C.A. No. 3630 declared unitary by District Court order of August 22, 1975 and noted with approval by the Fifth Circuit in its denial of rehearing in *Calhoun*, supra, and its more recent decision in No. 77-2937, *Horton, et al. v. Lawrence County Alabama Board of Education*, (August 14, 1978).

The thrust of these recent decisions of this Court is that there are limits as to how far a lower court can go in

fashioning remedies in school desegregation cases and that the remedy cannot exceed the constitutional violation. These decisions also recognize that predominantly one-race schools are not necessarily the result of constitutional violations but may result from residential impaction due to causes over which the local school board or State has no control, nor any responsibility for, and that such result, therefore, can not be imputed to the State or local school boards.

The decisions of the Court below in *Carr*, *Calhoun*, and *Bush*, supra, approved desegregation plans which left far more, both numerically and percentage-wise, one-race schools than exist in this small Parish school system. In its most recent decision in *Horton*, supra, the Court below approved a desegregation plan adopted by the District Court which, in a small school system of only thirteen schools, with an overall population of approximately 75% white and only 25% black, permitted the continued existence of three 100% white schools and three schools with a black student enrollment of over 60%. The import and effect of the decision of the Court below in this case is to pair and racially balance the student enrollment at every school which will make each school majority black and ultimately all black.

As a result of the 1970 Court order, the white student enrollment in this school system dropped to approximately 1,750 students. The present Superintendent of Schools, who was appointed shortly after that Court order went into effect, with a different attitude, recognition of his responsibilities under the law, and by working with the citizens of DeSoto Parish, both black and white, has been able to get white students back into the system

as shown by the present white enrollment of 2,381 students.

This success was not achieved overnight nor did it happen by chance. School systems do not operate in a vacuum. A school Superintendent and a School Board are not dealing with "numbers"; they are dealing with people, both black and white, with their individual prejudices and human frailties, and with their most prized possession, their children. This new, young Superintendent immediately went to work to try to save his school system. He solicited assistance and guidance from the State universities. He developed in-service programs for his faculties and staff, and improved curriculum offerings for his students. With the help of his integrated School Board of both white and black elected citizens, he established an open door policy and lines of communication with all segments of the community, rich and poor, black and white.

He and his School Board have been successful. In recent state-wide reading tests administered to students, the students in his school system scored at or very near the top. His students make at least as good grades at the University as they did in high school.

However, with publication of the decision of the Court below, the successes of the past seven years are once again in jeopardy. The private school enrollment again increased during this summer even though the Court of Appeal's decision is not yet final. The people in the community, both black and white, who stood up for public education and supported the School Board and its Superintendent during the past seven years are now talking of giving up. And this includes leaders in both

the black and white communities. They thought they had accomplished so much in these few years. Both black and white citizens, parents, students and teachers were happy with, and proud of, their school system as it is presently operating. This attitude is evidenced not only by statements made, but also by the complete unanimity of black and white leaders in the community in opposing the Government's position as noted heretofore. It is further evidenced by the complete unanimity of the School Board, composed of both white and black elected citizens, in opposing the Government's position.

However, even with this feeling of despair, this School Board and its Superintendent have not yet given up. Since the decision of the Court below was rendered, the Superintendent and several School Board members, both black and white, have gone to the Department of Justice in Washington to propose a plan which would virtually pair all of the schools as apparently required by the decision of the Court below. All they asked was for time, a mere two years, to sell such program to the people in the community and to call the necessary tax elections to obtain the funds to build the new facilities which they believed might make the Fifth Circuit's mandate a workable plan. They proposed to pair and provide improved facilities at the two Logansport schools. They proposed to improve the facilities at the Stanley school and enlarge its zone so that it would have a more representative racial balance. They proposed to build a new high school to serve all high school students in the Mansfield area and to improve and pair the elementary schools. They proposed to improve the facilities at both Stonewall and Second Ward, make each

a K-5 elementary school, and build a new high school in between these two communities to serve all high school students in both areas. They proposed to reshuffle their faculties at each school in order to get a more representative racial balance.

The Government has refused to grant any time for construction of these new facilities which are necessary to make the plan work. The Government's position is that everything must be done immediately. The Government's position is, apparently, that decisions of this Court and the Court below prohibit them from considering anything other than a complete and total racial balance in each school immediately.

Petitioners fear that, considering the very strong language in the opinion of the Court below and the Government's insistence on total pairing and racial balancing, the District Court on remand may feel that it is mandated to implement such requirements and would no longer have the flexibility to require less or to grant time for such a plan to be workable. Yet, petitioners respectfully submit that such a proposal, including the time required, should not appear unreasonable to reasonable men. Petitioners believe that such a proposal, particularly when requested by both black and white citizens, falls within the flexibility of, and does not offend, the Constitution. Petitioners respectfully submit that the granting of time to provide these improved facilities would not violate the spirit of this Court's decisions, including Green v. County School Board of New Kent County, 391 U.S. 430, 20 L.Ed.2d 716, 88 S.Ct. 1689 (1968) cited by the Government with respect to the term "now". Considering the facts of this case, a small system

with integrated faculties and half of its schools integrated, petitioners would respectfully submit that the granting of time requested for these new facilities would clearly be within the meaning and spirit of this Court's more recent decisions.

Petitioners would also respectfully submit that the existence of some one-race or "out of racial balance" schools in this school system is not absolutely prohibited. As Justice Powell noted in his concurring opinion in Austin, supra:

> "*Apparently misconceiving* the impact of language in Green v. County School Board of New Kent County, 391 U.S. 430, 442, 20 L.Ed. 716, 88 S.Ct. 1689 (1968), to the effect that there should be no 'negro' school or 'white' school, the Court of Appeals *seems to believe every school must be racially balanced to some degree . . .*" (emphasis added)

For example, the Government has rejected the School Board's proposal that Stonewall High School and Second Ward High School which presently serve grades K-12 be converted to elementary schools serving only grades K-6 with a new high school to be built in between serving all students of both areas in grades 7-12 even though the opinion of the Court below noted ". . . the difficulties presented by the Stonewall and Second Ward High Schools, which are located 12.8 miles apart . . ." (5th Circuit Opinion, Appendix B, page 57, Footnote 32). Petitioners respectfully submit that the parties and the District Court will need some clarification and guidance from this Court on remand.

As stated heretofore, school systems do not operate in a vacuum. Education does not take place in a vacuum.

"Numbers" and "percentages" mean little in the context of improving educational opportunities for each and every child, regardless of race, color or creed, or in the context of maintaining and improving a viable, progressive educational system. Petitioners respectfully submit that some leeway, some flexibility, some time, must be given educators and school boards who are; in absolute good faith, attempting to meet their responsibilities under the law and at the same time improve the educational opportunities of all their children. Petitioners would respectfully suggest that such flexibility in the instant case would fall well within the thoughts expressed in Mr. Justice Powell's concurring opinion in *Austin*, supra, when he said in Footnote 7 at page 605:

> "A related equitable principle, also applicable in fashioning a desegregation remedy, is that a court has the duty to '*balanc[e] . . . the individual and collective interests.*' Milliken v. Bradley, 418 U.S., at 738, 41 L.Ed.2d 1069, 94 S.Ct. 3112. *The individual interests at issue here are as personal and important as any in our society. They relate to the family, and to the concern of parents for the welfare and education of their children—especially those of tender age. Families share these interests wholly without regard to race, ethnic origin, or economic status.* It also is to be remembered, in granting equitable relief, that a desegregation decree is unique in that its burden falls not upon the officials or private interests responsible for the offending action *but, rather, upon innocent children and parents.*" (emphasis added)

CONCLUSION

For the above and foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit Court of Appeals.

Respectfully submitted,

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ATTORNEY FOR PETITIONERS

CERTIFICATE

I hereby certify that I am a member of the Bar of this Court and that two copies of the above and foregoing Petition for Writ of Certiorari were mailed, postage prepaid, to the Attorneys for the United States, J. Stanley Pottinger, Brian K. Landsberg, Walter W. Barnett, and Mark L. Gross at their office at the Department of Justice, Washington, D.C., 20530.

Baton Rouge, Louisiana, this 13th day of September, 1978.

JOHN F. WARD, JR.

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA SHREVEPORT DIVISION

Civil Action No. 12,589

UNITED STATES OF AMERICA

VERSUS

DESOTO PARISH SCHOOL BOARD, ET AL

RULING ON MOTION

The United States filed the original complaint in this cause on January 7, 1967, pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, against the DeSoto Parish School Board. In its complaint the government alleged that the racially dual system of education of eight all-white and seven all-black schools in the parish deprived black students therein of their right to equal protection of the laws as guaranteed by the United States Constitution and the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq. On April 7, 1967 this Court (Dawkins, J.) ordered that defendants be permanently enjoined from discriminating on the basis of race or color in the operation of the DeSoto Parish School System and that defendants take affirmative action to eliminate all school segregation and its effects. *United States v. Jefferson County Board of Education*, 380 F.2d 385 (5th Cir. 1967).

After the Supreme Court's decision in *Green v.*

County School Board of New Kent County, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716 (1968), Judge Dawkins ordered a hearing on plaintiff's motion for supplemental relief to assess the sufficiency of the freedom-of-choice plan in dismantling the dual school system in the parish. The Court denied plaintiff's motion, but on appeal the Fifth Circuit Court of Appeals remanded the case for certain factual findings. 403 F.2d 181 (1968). On remand, Judge Dawkins found that the freedom-of-choice plan then in effect had prospects for dismantling the dual school system, thus plaintiff's motion for supplemental relief was again denied. The Court of Appeals reversed the denial finding that the freedom-of-choice plan had no real prospect of implementing the requirements of *Green*, *supra*, and required defendants to develop a new plan that would satisfy the *Green* standards. *Hall v. St. Helena Parish School Board*, 417 F.2d 801 (1969).

New plans were submitted and on August 4, 1969 Judge Dawkins rejected a plan filed by the Department of Health, Education and Welfare and approved, with certain modifications, the School Board's plan. The approved plan, which provided for geographic attendance zones in some portions of the parish and freedom-of-choice zones in others, was to begin with the 1969-70 school year and would be fully implemented by the 1970-71 school year. When fully implemented, the freedom-of-choice aspects of the plan would be eliminated, certain portions of the parish would be geographically assigned to particular schools and all students transported to school would be assigned to schools so that no black student would be transported past any

formerly all-white school and no white school would be transported past any formerly all-black school.

The United States appealed the August 4, 1969 order and the Court of Appeals reversed and remanded the case with directions that the School Board be required to prepare for complete student desegregation by February 1, 1970, in the event that the Supreme Court decided *Carter v. West Feliciana Parish School Board* so as to require immediate, complete desegregation. The Supreme Court did require immediate, complete desegregation in *Carter*, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477 (1970), thus Judge Dawkins was forced to reconsider his order of August 4, 1969. On January 30, 1970, he ruled that the Fifth Circuit had not disapproved of the substantive portions of the plan which the Court had ordered into effect on August 4, but merely required that total implementation of the plan be accomplished by February 1, 1970. Accordingly, the Court ordered that the plan approved on August 4, 1969 be implemented by February 1, 1970. The DeSoto Parish school system continues to operate under that plan as of this date.

On July 24, 1975 the government filed a motion for supplemental relief alleging that defendants have failed to eliminate the dual system and seeking entry of an order requiring the DeSoto Parish School Board to develop, adopt and implement a comprehensive school desegregation plan which would fully satisfy the requirements of the United States Constitution as enunciated by the Supreme Court in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and subsequent school desegregation decisions of the Fifth Circuit. It is this mo-

tion which forms the basis for the present opinion.

On February 10, 1976 a hearing was held on the merits of the government's motion. At that hearing the government contended (1) the schools in DeSoto Parish can still be identified as "white" schools or "black" schools by the student enrollment; (2) the defendants have continued to assign staff members to schools in a manner that indicates that particular schools are intended for students of a particular race; and (3) defendants have failed to dismantle the dual transportation system in DeSoto Parish.

A. RACIALLY IDENTIFIABLE SCHOOLS AND DUAL TRANSPORTATION SYSTEM

Of the eleven schools now in operation in DeSoto Parish, five were originally constructed for blacks prior to the 1970 desegregation order.[1] Four of these five schools still have a student body which is 100 per cent black, and the fifth school's student is 97 per cent black.[2] These figures have not changed appreciably since implementation of the 1970 order.[3]

Although the schools constructed for blacks have remained all or practically all black even after the desegregation order, it is unclear whether this situation results from the student attendance zones or from the transportation system in effect in DeSoto Parish. From the testimony adduced at the February 10 hearing, this Court is inclined to believe that the transportation system has been the primary contributor to the one-race schools.

[1]Tr. p. 11.
[2]See Exhibit "A", attached hereto.
[3]See Exhibit "A", attached hereto.

When DeSoto Parish maintained a dual school system, prior to the 1970 order, it also operated a segregated transportation system with one set of buses transporting only white students to all-white schools and another set of buses transporting only black students to all-black schools.[4] When questioned as to what changes were made in the transportation system after 1970 the Superintendent of DeSoto Parish Schools, Douglas McLaren, stated:

> "I would say that they [the bus routes] are substantially the same." Tr. p. 47.

When asked if the system still operates overlapping bus routes, with one bus picking up black students and the other picking up white students, Superintendent McLaren stated:

> "Yes. We do have some overlapping bus routes." Tr. p. 39.

The testimony of DeSoto Parish bus drivers as well as transportation data submitted into evidence by the government substantiates this Court's opinion. In the 1974-75 school year, over 90 per cent of both black and white students who were transported via school bus rode one-race buses.[5] Even black students attending formerly all-white schools rode on all-black buses.[6] Additionally, virtually all of the black bus drivers employed by DeSoto Parish are assigned to transport only black students.[7] The transcript of the February 10 hearing

[4]Tr. pp. 45-46.
[5]Government's Exhibit 7 at pp. 11, 23, 43, 58, 74, 84, 93, 100, 125, 143 and 165.
[6]Tr. pp. 144-147.
[7]Government's Exhibit 7 at pp. 1-4, 11, 23, 43, 58, 74, 84, 93, 100, 125, 143 and 165.

evidences many instances where one bus travels a route picking up only white students and another bus follows substantially the same route picking up only black students.[8] The maps of the bus routes of each school demonstrate overlapping segregated routes.[9]

Judge Dawkins' order of January 30, 1970 provides in part:

> "Effective February 1, 1970, no Negro student will be transported by the DeSoto Parish School Board past a formerly all white school that serves the student's class or grade level and no white student will be transported by the DeSoto Parish School Board past a formerly all Negro school that serves the student's class or grade level."

In addition to the maintenance of segregated bus routes, the evidence shows that the routes which exist have been established in such a manner as to circumvent this part of the 1970 order. This was accomplished through the use of circuitous routes rather than utilizing the shortest and most logical route possible.[10]

In short, the Court is convinced that the DeSoto Parish School Board has failed to dismantle the dual system of student transportation and has failed to comply with the spirit of the above quoted portion of Judge Dawkins' 1970 order. It is this failure, in the Court's opinion, which results in the existence of four all-black and one almost all-black schools in an eleven-school system.

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[8]Tr. pp. 88-89.
[9]Government Exhibits 7A-7J.
[10]Tr. pp. 82-85, 131-135.

B. TEACHER ASSIGNMENTS

The Court of Appeals for the Fifth Circuit in *Singleton v. Jackson Municipal Separate School District*, 419 F.2d 1211 (1969), held:

> "Effective not later than February 1, 1970, the principals, teachers, teacher-aides and other staff who work directly with children at a school shall be so assigned that in no case will the racial composition of a staff indicate that a school is intended for Negro students or white students. For the remainder of the 1969-70 school year the district shall assign the staff described above so that the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system."

The faculty assignment statistics set out in Exhibit "B", attached hereto, as well as the testimony of Superintendent McLaren, reveal that the School Board has failed to achieve the racial balance of teachers called for in *Singleton*. The five schools which were originally constructed to serve only black students continue to have a substantially higher percentage of black faculty than the schools which were designed to serve white students, although the ratio of black to white teachers in DeSoto Parish is approximately 50 per cent. None of the other schools, which were formerly all white, has a black faculty percentage greater than 31 per cent.

Nevertheless, a review of the racial composition of the faculty of each school in DeSoto Parish since the time of the 1970 order reveals that gradual, yet steady improvement is being made in this area in most of the schools. Furthermore, this Court is not disposed to or-

dering school boards to achieve desegregation by implementing strict mathematical ratios either in student or teacher assignments. As the United States Supreme Court stated in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971):

> "*** If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole." 91 S.Ct. at 1280.

In the area of teacher assignments the Court will pay particular attention to the statistics revealed by annual reports for future years. It is expected that the white-black teacher ratio in each school in DeSoto Parish will continue to improve and it is hoped that such improvement will come more rapidly in the future.

CONCLUSION

The government's motion for supplemental relief is granted insofar as further relief from the dual transportation system is concerned. In all other respects, the motion is denied. Plaintiff and defendants are ordered to meet and re-examine the student transportation system existing in DeSoto Parish and to eliminate all routes which are overlapping and segregated. Also to be eliminated are all circuitous routes which have the effect of avoiding Judge Dawkins' January 1970 mandate. Should plaintiff and defendants fail to agree upon a new transportation plan on or before August 20, 1976, each side will, within five (5) days thereafter, submit its proposed plan to the Court. Only in the event that the parties fail to reach an agreement will this Court intervene further into the operations of the DeSoto Parish School Board.

THUS DONE AND SIGNED in Chambers at Shreveport, Louisiana, this 23rd day of July, 1976.

/s/ TOM STAGG
United States District Judge

ATTACHMENT A

DeSoto Parish School System Student Enrollment by Race
1970-71 thru 1975-76

School	Grades*	1970-71 W	B	T	%B	1971-72 W	B	T	%B	1972-73 W	B	T	%B
All Saints HS	1-12	0	317	317	100%	0	318	318	100%	0	274	274	100%
DeSoto HS	7-12	0	665	665	100%	1	688	689	99%	0	654	654	100%
Johnson Elem. School	1-6	0	828	828	100%	2	864	866	99%	0	891	891	100%
Logansport HS	1-12	467	41	508	8%	465	25	490	5%	483	27	510	5%
Logansport Rosenwald HS	1-12	0	462	462	100%	0	471	471	100%	0	451	451	100%
Mansfield Elem. School	1-7	430	225	655	34%	484	189	673	28%	505	181	686	26%
Mansfield HS	8-12	333	93	426	22%	325	103	428	24%	378	120	498	24%
Pelican HS	1-12	132	114	246	46%	120	102	222	46%	124	104	228	46%
Second Ward HS	1-12	0	846	846	100%	0	791	791	100%	0	736	736	100%
Stanley HS	1-12	218	46	264	17%	222	38	260	15%	226	33	259	13%
Stonewall HS	1-12	211	63	274	23%	256	58	314	18%	294	62	356	17%
Total		1791	3700	5491	67%	1875	3647	5522	66%	2010	3533	5543	64%

Source: Government Exhibit 4

*Kindergarten was added to each school with elementary grades in 1973-74.

School	Grades*	1973-74 W	B	T	%B	1974-75 W	B	T	%B	1975-76 W	B	T	%B
All Saints HS	K-12	0	270	270	100%	3	237	240	99%	7	242	249	97%
DeSoto HS	7-12	0	672	672	100%	0	652	652	100%	0	700	700	100%
Johnson Elem. School	K-6	0	932	932	100%	0	929	929	100%	0	895	895	100%
Logansport HS	K-12	509	31	540	6%	540	47	587	8%	563	43	606	7%
Logansport Rosenwald HS	K-12	0	470	470	100%	0	442	442	100%	0	439	439	100%
Mansfield Elem. School	K-7	531	204	735	28%	561	198	759	26%	616	218	834	26%
Mansfield HS	8-12	387	126	513	25%	371	134	505	27%	374	142	516	28%
Pelican HS	1-12	121	98	219	45%	119	102	221	46%	112	97	209	46%
Second Ward HS	K-12	0	747	747	100%	0	718	718	100%	0	695	695	100%
Stanley HS	K-12	226	36	262	14%	244	32	276	12%	241	25	266	9%
Stonewall HS	K-12	347	75	422	18%	405	74	479	15%	403	68	471	14%
Total		2121	3661	5782	63%	2243	3565	5808	61%	2316	3564	5880	61%

*Kindergarten was added to each school with elementary grades in 1973-74.

ATTACHMENT B

DeSoto Parish School System Faculty At Each School By Race
1970-71 thru 1975-76

School	1970-71				1971-72				1972-73			
	B	W	T	%B	B	W	T	%B	B	W	T	%B
All Saints HS	16	2	18	89%	16	4	20	80%	15	4	19	79%
DeSoto HS	28.5	6	34.5	83%	27	9	36	75%	26	9	35	74%
Johnson Elem. School	26.5	3	29.5	90%	25	6	31	81%	24	8	32	75%
Logansport HS	8	21	29	28%	8	22	30	27%	7	22	29	24%
Logansport Rosenwald HS	15	7	22	68%	18	6	24	75%	18	6	24	75%
Mansfield Elem. School	8	21.5	29.5	27%	9	20	29	31%	9	20	29	31%
Mansfield HS	6	18.5	24.5	24%	6	18	24	25%	6	20	26	23%
Pelican HS	6	10	16	38%	6	10	16	38%	6	9	15	40%
Second Ward HS	37	3	40	93%	34	7	41	83%	31	9	40	78%
Stanley HS	5	10	15	33%	5	10	15	33%	5	10	15	33%
Stonewall HS	5	10	15	33%	5	10	15	33%	5	13	18	28%
Special Teachers	3	3	6	50%	4	4	8	50%	5	8	13	38%
Assistant Teachers	0	0	0		1	2	3	33%	4	3	7	57%
Total	164	115	279	59%	164	128	292	56%	157	138	302	52%

Source: Government Exhibit 12

School	1973-74				1974-75				1975-76			
	B	W	T	%B	B	W	T	%B	B	W	T	%B
All Saints HS	16	4	20	80%	14	4	18	78%	13	5	18	72%
DeSoto HS	27	10	37	73%	27	9	36	75%	27	10	37	73%
Johnson Elem. School	30	10	40	75%	30	10	40	75%	30	11	41	73%
Logansport HS	8	22	30	27%	8	23	31	26%	8	23	31	26%
Logansport Rosenwald HS	21	7	28	75%	21	8	29	72%	17	12	29	59%
Mansfield Elem. School	9	22	31	29%	9	22	31	29%	9	24	33	27%
Mansfield HS	6	21	27	22%	6	21	27	22%	6	22	28	21%
Pelican HS	6	11	17	35%	6	11	17	35%	4	13	17	24%
Second Ward HS	33	9	42	79%	33	9	42	79%	33	9	42	79%
Stanley HS	5	11	16	31%	5	11	16	31%	5	11	16	31%
Stonewall HS	5	15	20	25%	6	16	22	27%	6	17	23	26%
Special Teachers	3	4	7	43%	3	6	9	33%	4	5	9	44%
Total	169	146	315	54%	168	150	318	53%	162	162	324	50%

Appendix B

UNITED STATES v. DeSOTO PARISH SCH. BD.

UNITED STATES of America,
Plaintiff-Appellant,

v.

DeSOTO PARISH SCHOOL BOARD et al.,
Defendants-Appellees.

No. 76-3471.

United States Court of Appeals,
Fifth Circuit.

June 2, 1978.

Following judicial approval of a school desegregation plan in 1970, the United States in 1975 filed a motion for further relief. The United States District Court for the Western District of Louisiana at Shreveport, Tom Stagg, J., denied the Government's request for broad relief and ordered only that the defendant school board reexamine and modify the student transportation system. The Court of Appeals, Brown, Chief Judge, held that the District Court erred in refusing to order additional remedial measures to correct the extreme racial imbalances that continued to exist in the parish schools.

Affirmed in part, reversed in part and remanded.

Gee, Circuit Judge, filed a specially concurring opinion.

Appeal from the United States District Court for the Western District of Louisiana.

Before BROWN, Chief Judge, MORGAN and GEE, Circuit Judges.

JOHN R. BROWN, Chief Judge:

In this appeal, we must determine whether the United States is entitled to the additional remedial measures it seeks in this school desegregation suit. Litigation began in January, 1967, when the United States filed a complaint under Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c-6, to desegregate the public schools in DeSoto Parish, Louisiana. The District Court approved a desegregation plan in 1970. In 1975, the United States filed a motion for further relief, alleging that the plan had failed to eliminate the dual school system and asking the District Court to order and implement comprehensive modifications. Specifically, the Government claimed that the defendants had failed to eradicate racially identifiable schools, failed to comply with the faculty assignment requirements established for this Circuit in *Singleton v. Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F.2d 1211 (en banc), and continued to operate a segregated student bus system. After an evidentiary hearing, the District Court found that four of the parish's eleven schools were attended by only black students and that the racial balance of teachers required by *Singleton* had not been achieved. The District Court Judge nonetheless denied the Government's request for broad relief, ordering only that the defendant school board reexamine and modify the student transportation system. The Judge did not order any changes concerning other methods of student assignment and refused to require additional measures to integrate the faculty. The Government appeals from this limited grant of relief.

We affirm the District Court's finding that the 1970

desegregation plan has not cured the constitutional violation established over a decade ago and the conclusion that further relief is required. Given this finding and conclusion, and absent any sufficient finding that no effective, workable alternative to the 1970 plan can feasibly be implemented, we hold that the District Court erred in refusing to order additional remedial measures to correct the extreme racial imbalances that continue to exist in the DeSoto Parish schools. We therefore reverse and remand.[1]

I.

The DeSoto Parish School System

DeSoto is a rural parish located near the border between Louisiana and Texas.[2] In 1967, when the United States began this suit, the school system consisted of eight all-white and seven all-black schools.[3] In 1976, when the District Court ruled on the Government's motion for further relief, the school board operated eleven schools.[4] Five of these schools—All Saints High School (grade K-12), DeSoto High School (grades 7-12), Second Ward High School (grades K-12), Logansport-Rosenwald High School (grades K-12), and Johnson Elementary School (grades K-6)—were originally built for blacks.[5] The District Court Judge found that, in the 1975-76 school year, four of these schools were still attended by only black students, and the fifth had a student population that was 97 percent black.[6] The schools originally built to serve white pupils exclusively—Mansfield High School (grades 8-12), Stanley High School (grades K-12), Pelican High School (grades K-12), Stonewall High School (grades K-12), Logansport High School (grades K-12), and Mansfield Elementary School (grades K-7)—had student bodies ranging from approximately 67 percent to 85 percent white. In 1975-76, the parish schools were attended by a total of 5,880 students, of whom 60 percent were black and 40 percent white, a ratio that has remained constant since this case began.[7]

[1] As is our practice in school cases, we held a conference attended by a member of the Court, counsel for the parties, and, in this case, the superintendent of schools. In drafting this opinion, we have relied on the conference proceedings to focus the issues in contention and the facts on which the parties agree.

[2] Indeed, for years students from Logan, Galoway, and Savine, Texas, small communities just across the border, have taken buses to attend Logansport High School in DeSoto Parish.

[3] Until 1957, state law required that the Louisiana public schools be operated on a segregated basis. La.Const. Art. 12, § 1 (1932); LSA-R.S. 17:331-334, derived from Acts 1954 No. 555, §§ 1-4 (repealed 1957). Until 1971, no white student in DeSoto Parish attended any school originally designated for blacks; during the 1969-70 school year, only 36 black students (out of 3,720 enrolled in the parish) used a freedom of choice option to attend schools originally built for whites. *Hall v. St. Helena Parish Sch. Bd.*, 5 Cir., 1969, 417 F.2d 801, 814.

[4] Four schools, two traditionally black and two traditionally white, have been closed since this litigation began. See note 24, *infra*.

[5] Kindergarten was added to each school that taught elementary grade students in the 1973-74 school year.

[6] In 1975, this fifth school, All Saints, was paired with Pelican High School, originally built for white students, to compensate for declining enrollments in both schools. As of January, 1977, All Saints-Pelican High School (grades 7-12) had a student population that was 82 percent black. At the same time, Pelican and All Saints Elementary schools were paired, resulting in a student body that was 85 percent black.

[7] Enrollment figures by race and school since 1970 are charted in Appendix A, *supra*.

As the District Court's 1970 order points out, there is little concentrated residential segregation in the parish; the black population is scattered throughout the area. Since all the schools were built under the dual system, they are located so that each area of the parish is served by at least one traditionally white school and one traditionally black school. As a result, several of the all-black schools are located in close proximity to schools that remain predominantly white.[8]

During the 1975-76 term, 324 faculty members taught at the DeSoto public schools. The systemwide ratio of black to white teachers was fifty-fifty. The segregated condition of the schools extended to the faculty as well as the students; until 1968, no white teachers were assigned to traditionally black schools, and no black teacher taught at a school built for white students. In 1976, after five school years of operation under a desegregation decree, the faculties of the traditionally black schools ranged from 59 percent to 79 percent black, while the faculties of the six traditionally white schools ranged from 81 percent to 71 percent white.[9]

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[8] For example, Logansport High School (93 percent white) and Logansport-Rosenwald High School (100 percent black) are 1.2 miles apart; Mansfield Elementary School (74 percent white), Mansfield High School (72 percent white), Johnson Elementary School (100 percent black), and DeSoto High School (100 percent black) are approximately 1.5 miles from each other. Pelican High School (54 percent white) is 0.9 miles from All Saints High School (100 percent black); these schools have been paired since this case was decided.

[9] Faculty distribution by race and school since 1970 is charted in Appendix B, *supra*.

The 1970 Desegregation Plan

In 1970, after protracted litigation,[10] the school board was ordered to comply with a desegregation de-

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[10] The progress of this litigation mirrors the progress of the law of school desegregation. Both can be traced through the repeated journeys the suit has made to this Circuit. The District Court's 1967 injunction followed the decision of this Court in *United States v. Jefferson County Bd. of Educ.*, 5 Cir., 1967, 380 F.2d 385, 389 (en banc), *cert. denied*, 389 U.S. 840, 88 S.Ct. 67, 19 L.Ed.2d 103, holding that school boards "have the affirmative duty . . . to bring about an integrated, unitary school system in which there are no Negro schools and no white schools—just schools." The District Court on remand approved a freedom of choice option, *Conley v. Lake Charles Sch. Bd.*, 1968, W.D.La., 293 F.Supp. 84; the Fifth Circuit ordered that this be reexamined in *Adams v. Mathews*, 5 Cir., 1968, 403 F.2d 181. The District Court's reaffirmation of freedom of choice was reversed in *Hall v. St. Helena Parish Sch. Bd.*, 5 Cir., 1969, 417 F.2d 801, *cert. denied*, 396 U.S. 904, 90 S.Ct. 218, 24 L.Ed.2d 180, and the case remanded for reconsideration in light of the duty articulated in *Green v. County Sch. Bd. of New Kent County*, 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716, to "come forward with a plan that promises realistically to work . . . *now*." The District Court then approved a plan formulated by the school board that was to be implemented over a three-year period; in *United States v. DeSoto Parish Sch. Bd.*, 5 Cir., 1970, 420 F.2d 380, this Court held the plan inadequate in light of *Singleton v. Jackson Municipal Separate Sch. Dist.*, 5 Cir., 1969, 419 F.2d 1211, 1217-18, (faculty and staff desegregation to be accomplished effective February 1, 1970). *Singleton* allowed the desegregation of students in several school districts to be deferred beyond February 1, 1970. This portion of the decision was reversed by the Supreme Court in *Carter v. West Feliciana Parish Sch. Bd.*, 1970, 396 U.S. 290, 90 S.Ct. 608, 24 L.Ed.2d 477. The Fifth Circuit ordered the school board to prepare for complete desegregation by February 1, 1970, "in the event" the Supreme Court did reverse that aspect of *Singleton*. On remand after *Carter* was decided, the District Court readopted the plan approved in 1969, modifying it to incorporate *Singleton* and to require implementation effective February 1, 1970.

The United States did not appeal from the District Court's 1970 order approving the desegregation plan.

cree based on a plan it submitted to the District Court.[11]

This plan assigned students to schools under one of three alternative arrangements. Students living within attendance zones established by the plan had to attend a designated school, subject to a majority-to-minority transfer proviso.[12] Students who did not live within a zoned area attended school according to the destination of the bus they rode. Finally, any student who did not live in a zoned area and provided his own transportation could attend the school of his or her choice.[13]

Attendance Zones

The 1970 plan established four zones within the parish. At the 1976 hearing, the United States presented evidence showing that the zones are noncontiguous, that

[11]The 1970 plan incorporated a requirement that the school board make annual reports to the District Court. Such a requirement has long been the practice in school cases. *E.g., United States v. Jefferson County Bd. of Educ.*, 5 Cir., 1967, 380 F.2d 385, 395 (en banc). A more detailed set of reporting requirements was ordered in December, 1970, on motion by the Government. We have used these reports in reviewing the District Court's findings and in understanding current conditions.

[12]No attendance zones existed prior to the 1970 desegregation plan. Students were assigned to school by race and by bus that both passed closest to his home and that carried students of his own race, and would attend the school to which the bus war routed.

[13]The 1970 plan provided for assignment by zones, transportation, and majority-to-minority transfer. The option permitting students living outside zoned ares to attend the school of their choice if they provided their own transportation was based on the school board's interpretation of the Court order to mean that "if a child rode the bus . . . he must go to the school to which the bus transported him. If he did not get on the bus, then he was not covered under . . . the Court order, and he may enroll at the school to which he requested enrollment." [Deposition of Superintendent of Schools Douglas McLaren, at 103.]

in several instances the zones are drawn around racially homogenous residential areas[14] and assign the children living there to a school originally designated for students of that race, and that frequently children are zoned to schools attended primarily or exclusively by students of their own race when other schools are located closer to their homes. The pattern of the zones is consistent with this evidence.

The city of Mansfield constitutes one zone, and contains three subzoned areas: one surrounds an all-black residential area and assigns children living there to Johnson Elementary School and DeSoto High School, which are completely black; the second assigns students to DeSoto High School from an all-black residential area; the third zone covers the remainder of the city, and assigns students to the predominantly white Mansfield High School and Mansfield Elementary School. At the hearing, school officials admitted that many of the white students zoned to Mansfield Elementary live closer to Johnson Elementary, and those zoned to Mansfield High School live closer to DeSoto High School [Tr. at 33-35.]

The second zone comprises the city of Logansport, located in the west and southwest portion of the parish. The plan drew boundaries for one subzone within Logansport around the only black residential part of the area and assigned students to the principally black Logansport-Rosenwald High School. The remainder of

[14]Although there is no monolithic concentration of blacks in any single area, there are pockets of racially homogenous neighborhoods scattered throughout the parish.

the city was zoned to the traditionally white Logansport High School. The third zone in the parish encompasses the Stanley area, also located in the southwestern region. The students living within this zone, most of whom are white, are assigned to the traditionally white Stanley High School. The fourth zone covers the Stonewall-Second Ward area in the northern section of the parish. The zone is divided into two parts: the first encompasses a principally white residential area and assigns students living within it to the traditionally white Stonewall High School, and the second surrounds a largely black residential area and directs students within it to the wholly black Second Ward High School.

To assess the Government's contention that the zones must be altered in any constitutionally sufficient plan, the other methods of student assignment included in the 1970 plan must also be examined.

Bus Routes

As in many rural school districts, a large portion of the students attending public school in DeSoto Parish ride school buses.[15] The 1970 plan provided that students living outside a zoned area who did not furnish their own transportation would be assigned to a school by virtue of the bus they rode. This provision contained two further limitations: no black student was to be transported "past" a formerly all-white student school, and no white student was to be transported "past" a

[15]In the 1975-76 term, approximately 3,500 students, over 60 percent of the total school population, rode buses to school. Of this group, 2,544 were black, and 1,073 were white. [Tr. at 61.]

formerly black school; and no student would be permitted to use a bus stop other than the one closest to his home in order to avoid riding a particular bus.

The school board projected that under this plan 352 white students would ride buses routed to formerly black schools. In 1974-75, the school board's reports revealed that 129 white students should be on buses routed to formerly black schools. No white student actually rode such buses; none attended a formerly black school. Of the 2,544 black students who used the buses in the 1975-76 term only 449 (or 17 percent) rode to formerly white schools. Based on such figures and the testimony of bus drivers and school officials presented at the 1976 hearing, the District Court found that the school board had maintained the dual bus system that existed prior to the implementation of the 1970 decree.

The dual bus system was characterized by overlapping and circuitous routes. Two buses traveled down the same road or same general area, one picking up white students to take them to a traditionally white school, and

[16]Students were assigned to a bus route rather than a particular bus. School officials testified that if two buses come by one stop, a child could choose which bus to ride. [Tr. at 40; Deposition of Transportation Supervisor Raymond Powell, at 13.] In 1975-76, over 90 percent of the black and white students using the bus system rode buses containing only students of one race. Of the 449 black students who traveled by bus to formerly white schools, 409 (91 percent) rode on buses carrying only black students. [Government Exhibit 7.]

In addition to segregation according to student passengers, the record reveals substantial segregation of bus drivers. Seventy-three bus drivers were employed in the 1975-76 school year; the forty-four drivers were black carried no white children on their buses. [Government Exhibit 7.]

one picking up black students to deliver them to a traditionally black school.[16] Although the 1970 plan prohibited routes by which buses would be driven "past" schools attended by children of a race different from those riding the bus, this prohibition was circumvented by a highly literalistic interpretation. Buses were frequently routed circuitously to avoid passing directly in front of schools attended by students of a different race, resulting in unnecessarily long trips that ended at schools originally designated for children of the same race as the bus passengers. [Tr. at 82-95.] In particular, the Government directs our attention to the white students from Logansport and Carthage, Texas who ride buses to the predominantly white Logansport High School, although the all-black Logansport-Rosenwald school is closer.

Faculty Assignments

The 1970 desegregation decree incorporated the requirements of *Singleton v. Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F.2d 1211, 1217–18, that the faculty of each school must reflect the system-wide racial ratio of faculty members and that faculty members must accept reassignment as a condition of continued employment. At the 1976 hearing, school board officials admitted that neither requirement had been met, and the District Court found that the "five schools which were originally constructed to serve only black students continue to have a substantially higher percentage of black faculty than the schools which were

designed to serve white students, although the ratio of black to white teachers . . . is approximately 50 percent," and that no formerly white school had a "black faculty percentage greater than 31 percent."

The District Court's Ruling On The Motion For Further Relief

Against this background of largely undisputed facts, the District Court found that "[a]lthough the schools constructed for blacks have remained all or practically all black even after the desegregation order, it is unclear whether this situation results from the student attendance zones or from the transportation system. . . . [T]his Court is inclined to believe that the transportation system has been the primary contributor to the one-race schools." Stating that the "School Board has failed to dismantle the dual system of student transportation and has failed to comply with the spirit of the . . . 1970 order," the trial judge ordered the parties to reexamine the bus system and submit plans for the elimination of overlapping, circuitous, and segregated routes. The Court denied the Government's requested relief from the continued operation of the attendance zones and the freedom of choice option. This denial is implicitly premised on a finding that these aspects of the 1970 plan had not "resulted in" or "primarily contribute[d]" to the continued segregation of the schools.

The District Court agreed with the United States in finding that ". . . the School Board has failed to achieve the racial balance of teachers called for in *Singleton*." However, the District Court declined to order strict

compliance with the *Singleton* requirements. The Judge cited two reasons for this decision: the gradual, yet steady, improvement in the racial balance of the faculties achieved in most schools since 1970, and his disinclination to order "strict mathematical ratios" in either student or faculty assignments. Expressing a hope for more rapid improvement in the future, the District Court essentially modified the terms of the 1970 decree by declining to enforce the *Singleton* requirements it incorporated.

Finding errors of both fact and law, we reverse.

II.

[1,2] When a school system is found to be in violation of the Constitution, the duty of the responsible state officials is clear and compelling: "to take the necessary steps 'to eliminate from the public schools all vestiges of state-imposed segregation.' " *Milliken v. Bradley*, 1977, 433 U.S. 267, 290, 97 S.Ct. 2749, 2762, 53 L.Ed.2d 745, 762, *quoting Swann v. Charlotte-Mecklenburg Board of Education*, 1971, 402 U.S. 1, 15, 91 S.Ct. 1267, 1275, 28 L.Ed.2d 554, 566. If the school board defaults in its duty, the responsibility of the District Court is equally clear and compelling: to use its broad and flexible equitable powers to implement a remedy that, while sensitive to the burdens that can result from a decree and the practical limitations involved, promises "realistically to work *now*." *Green v. County Sch. Bd. of New Kent County*, 1968, 391 U.S. 430, 439, 88 S.Ct. 1689, 20 L.Ed.2d 716; *Swann, supra*.

Student Assignments

[3] The plan formulated by the school board and adopted by the District Court in 1970 was expected to result in student populations in the formerly black schools ranging from 76 percent to 98.5 percent black, and student bodies at the formerly white schools ranging from 54 percent to 90 percent white.[17] The statistics for actual enrollment show that the results never approached these expectations, modest though they were. In 1975-76, four of the five black schools remained 100 percent black; the formerly white schools remained 67 to 85 percent white.[18] The school board's most recent re-

[17] In submitting its desegregation plan to the District Court in 1970, the school board supplied the following figures as projections for expected enrollment as of February 1, 1970:

Former Black Schools

	Zoned		Transported		Total		Percent	
	B	W	B	W	B	W	B	W
DeSoto	344	3	376	101	720	104	87	13
Johnson	421	2	295	80	716	82	90	10
Longstreet-Rosenwald	0	0	122	14	122	14	89.7	10.3
Logansport-Rosenwald	75	0	288	114	363	114	76.1	23.9
All Saints	0	0	382	33	382	33	92	8
Second Ward	164	2	647	10	811	12	98.5	1.5

Former White Schools

	B	W	B	W	B	W	B	W
Mansfield Elem.	87	419	213	200	300	619	32.6	67.4
Mansfield H. S.	58	279	73	65	131	344	27.6	72.4
Logansport	54	192	0	296	54	488	10	90
Stanley	56	173	0	72	56	245	18.6	81.4
Pelican	0	0	132	155	132	155	46	54
Stonewall	16	98	72	136	88	234	27.3	72.7

[R. 148F–G.]

[18] The actual enrollment figures for each year in which this school desegregation plan operated are attached as Appendix A.

port to the District Court reveals that in 1977-78, the same four schools are still attended only by black students. "Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory . . . [and] that [the schools'] racial composition is not the result of present or past discriminatory action on their part." *Swann v. Charlotte-Mecklenburg Board of Education, supra*, 402 U.S. at 26, 91 S.Ct. at 1281, 28 L.Ed.2d at 572. As the District Court found, the school board is unable to meet this burden. The question on appeal is whether the 1970 plan, as modified by the District Court's 1976 order, offers any significant promise of eliminating the one-race schools that pervade the parish.

[4,5] The District Court found that the racial composition of the schools was "primarily" due to the school board's unconstitutional retention of the discriminatory dual bus system. So finding, and implicitly finding that other aspects of the 1970 plan challenged by the Government—particularly the attendance zones and the free choice option—did not cause the continued segregation, the Court ordered revisions in the bus routes but refused to require more radical modifications in the 1970 plan. We hold that this finding is clearly erroneous. The record is replete with evidence that several aspects of the 1970 plan, in addition to the segregated bus system, resulted in the continuing and extreme radical imbalance in the schools. There is no finding that merely modifying

the bus routes is likely to succeed in altering the racial composition of the schools. We do not believe such a finding can be made. The bus routes were altered pursuant to the 1976 order. The racial distribution of the schools showed almost no change as a result, failing even to realize the very modest projections cast by the school board.[19] Until the 1970 plan is significantly modified, we see no possibility that this school system will ever rid itself of the vestiges of state-imposed segregation.[20]

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[19]In submitting its revised transportation plan to the District Court in 1976, the school board projected that 276 white students would attend the four all-black schools, resulting in student populations at the schools ranging from 87.7 to 90 percent black. The attendance figures for the 1976-77 and 1977-78 terms show that none of these white students have enrolled; the schools remain 100 percent black.

[20]We find the state of this school system similar to the system before this Court in *Lee v. Demopolis City School System*, 5 Cir., 1977, 557 F.2d 1053, where we held that the procedures set forth by the Supreme Court last term in *Dayton Board of Education v. Brinkman*, 1977, 433 U.S. 406, 420, 97 S.Ct 2766, 2775, 53 L.Ed.2d 851, 863, did not govern "so extreme a case" with such "unique statistics." *Brinkman* instructs that:

> The duty of both the District Court and of the Court of Appeals *in a case such as this, where mandatory segregation by law of the races in the schools has long since ceased*, is to first determine whether there was any action in the conduct of the business of the school board which was intended to, and did in fact, discriminate against minority pupils, teachers or staff. *Washington v. Davis, supra* [426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597]. All parties should be free to introduce such additional testimony and other evidence as the District Court may deem appropriate. If such violations are found, the District Court in the first instance, subject to review by the Court of Appeals, must determine how much incremental segregative effect these violations had on the racial distribution of the Dayton school population as presently constituted, when that distribution is compared to what it would have been in the absence of such constitutional violations. The remedy must be designed to redress that difference, and only if

The attendance zones clearly affect the racial composition of the schools. The 1970 projections show that assignment on the basis of residence within an attendance zone would account for a substantial proportion of

there had been a systemwide impact may there be a systemwide remedy. *Keyes* [*School District No. 1, Denver, Colorado*], *supra* [413 U.S. 189], at 213 [93 S.Ct 2686, 37 L.Ed.2d 548].

[Emphasis added.]

In *Lee v. Demopolis*, the Court felt that the one-race composition of the only two elementary schools in a small city justified reversing the lower court's adjudication of unitariness and presuming an intent to discriminate on the aprt of local authorities. In both DeSoto Parish and Demopolis City, segregation by law has ended, but neither this event nor subsequently required affirmative steps to desegregate have substantially altered the racial balance of the schools. In *Lee*, this factor was sufficient to distinguish *Brinkman*, and we believe it suffices here as well.

Unlike *Lee*, however, we need not rely on a presumed intent to discriminate. The District Court found that the school system remained dual and that the school board had maintained segregated bus routes. Because the District Court found that neither the attendance zones nor the free choice option played a significant role in keeping the school system segregated, it did not consider whether these other aspects of the 1970 plan were intended to discriminate against black students. In reversing the denial of relief from these methods of student assignment, we need not presume that they were devised or retained with an intent to discriminate, nor ask the District Court to make findings on whether such an intent is present. Our mandate for further relief is based on the District Court's clear finding of a systemwide violation. We are not limited to correcting only those specific actions that have been found intentionally discriminatory. Nor are we required to send the case back to the District Court for findings of fact that, considering the lack of any change in the racial distribution of the schools, seem to us to be obvious. "[W]here, as here, a constitutional violation has been found, the remedy does not 'exceed' the violation if the remedy is tailored to cure the '*condition* that offends the Constitution.' " *Milliken v. Bradley*, 1977, 433 U.S. 267, 282, 97 S.Ct. 2749, 2758, 53 L.Ed.2d 745, 757 [*Milliken II*], *quoting Milliken v. Bradley*, 1974, 418 U.S. 717, 738, 94 S.Ct 3112, 3124, 41 L.Ed.2d 1069, 1087 [*Milliken I*]. The condition that offends the Constitution is the de jure

the students expected to enroll in the various schools.[21] Because fewer students than projected rode the buses, zoning assignments accounted for a higher percentage of students than the projections reveal.[22] Virtually no white students are zoned to attend formerly black schools, a result achieved by the congruence of zone boundaries with racially homogenous neighborhoods and schools.[23]

segregation in the schools. The remedial measures that must be ordered are those necessary "to restore the victims of discriminatory conduct in the position they would have enjoyed . . . in a school system free from pervasive *de jure* racial segregation." *Milliken II*, 433 U.S. at 282, 97 S.Ct. at 2758, 53 L.Ed.2d at 757.

[21] These projections show that assignment on the basis of residence within an attendance zone would account for approximately half the students expected to enroll in the four Mansfield schools, three-fourths of the students projected to attend the Stanley school, one-third of the students assigned to Stonewall High School, 16 percent of the students projected to enroll at Logansport-Rosenwald, and 20 percent of the students assigned to Second Ward High School. See note 17, *infra*.

[22] At Logansport-Rosenwald, for example, black students assigned by zoning constituted 16 percent of the total projected to enroll at the school. However, none of the 114 white students "assigned to the school by bus route ever attended. At DeSoto High School, zoning assigned 47 percent (344 black and 3 white students) of the total number of students projected to enroll in 1970. However, in 1970-71, none of the 104 white students assigned by bus route attended, resulting in a total enrollment of 665 black students, more than 47 percent of whom live within the area zoned to the school. And at Johnson Elementary, 53 percent (421 black and 2 white students) of the projected student body were assigned by attendance zone. None of the 82 white students projected to enroll at the school ever attended, resulting in a total enrollment of 828 black students.

[23] The superintendent of schools, Douglas McLaren, testified that the zone lines were drawn to move away from the "freedom of choice concept" in favor of a "neighborhood school approach." McLaren deposition, at 59. While a policy designed to achieve neighborhood schools has well-recognized benefits for the students,

The "free choice" option available to students who do not live in a zoned area and who can provide their own transportation has, if anything, a greater effect on the racial composition of the schools than the zones. Because almost all of the white students live outside zoned areas, they are essentially free to attend the school of their choice. Evidence at the 1976 hearing indicated that this arrangement, particularly in combination with the overlapping bus routes, allowed white students in the parish "a number of options . . . to avoid attendance at a black school, . . . without attending a private school." [Tr. at 29, 118.] That these options were used is clear: from 1970-76, only 13 white students attended formerly black schools.[24]

see *United States v. Jefferson County Bd. of Educ.*, 5 Cir., 1966, 372 F.2d 836, *aff'd en banc*, 1967, 380 F.2d 385, *cert. denied*, 389 U.S. 849, 88 S.Ct. 67, 19 L.Ed.2d 103, we do not believe that such a policy explains these zone boundaries. The zone lines deviate from "neighborhood" lines to follow racial lines; many children live closer to a school than the one they are assigned to attend under the zone system. We have long recognized that where "some white students are attending schools located greater distances from their homes than nearby schools where the student body is all Negro," a neighborhood school system does not exist. *Ellis v. Board of Public Instruction*, 5 Cir., 1970, 423 F.2d 203, 206-207 (*Ellis I*). The superintendent admitted that the neighborhood school concept as a basis for drawing the zone lines was tempered by another consideration: to keep white students from fleeing the system. [Deposition at 77.]

[24]The Government urges that an additional factor causing the continuing segregated condition of the schools is the reassignment of students from the four schools that have closed since this litigation began. Grand Cane High School, originally built for whites, closed in 1967; Longstreet High School, also designated for whites closed in 1969. Students from Grand Cane were assigned to attend Mansfield High School, Mansfield Elementary School, or Stonewall

As long as the attendance zone boundaries are retained as drawn and the free choice option remains, eliminating the overlapping and circuitous bus routes will not end the segregated condition of this school system. With the free choice option, the school board continues to provide white students with an easy alternative to attending a formerly black school while remaining in the public school system. The history of desegregation efforts in this parish shows that white students have consistently failed to attend traditionally black schools, while black students are zoned to such schools in significant numbers.

The school board does not deny that the zones are gerrymandered around racially homogenous neighborhoods, or that the overlapping bus routes and the free choice option have afforded white children an easy alternative to attending the black schools to which they were "assigned." Rather, the board makes a series of arguments to justify the minimal degree of desegregation attained under the 1970 plan. For the reasons stated

High School, all originally intended for white students. Students from Longstreet High School were given a freedom of choice option. The other two schools closed during this suit were originally designated for black students: Longstreet-Rosenwald High School closed in 1970, and Grand Cane Community High School closed in 1971. Students from Longstreet-Rosenwald were reassigned to two schools attended exclusively by black students, while students from Grand Cane Community were reassigned to Mansfield High School and Mansfield Elementary School, both schools originally intended for whites.

The record thus reveals that no white student who attended one of the closed schools was reassigned to a black school or went to such a school under a freedom of choice option. [Tr. at 16-18; McLaren deposition, at 108-114.]

below, none of these arguments are sufficient to excuse the board from taking additional affirmative steps to desegregate this school system.

The board's first argument is that even if the 1970 plan, as modified by the District Court's 1976 order, does not eliminate any or all of the one-race schools, this school system could still achieve unitary status. The board directs our attention to several recent opinions of this Court declaring school systems unitary despite the continuing existence of several racially identifiable schools. These decisions cannot aid DeSoto Parish. "We do not here contemplate a system including two or three essentially one-race schools resulting from geographic or demographic accidents and surviving as minor anomalies in a broadly integrated program, despite earnest planning and honest effort to eliminate them and those like them, because practical considerations of hazard, distance or expense all but forbid their elimination." *Lee v. Demopolis City School System*, 5 Cir, 557 F.2d 1053, 1054; *see also, United States v. Seminole County Sch. Dist.*, 5 Cir., 1977, 553 F.2d 992; *Ellis v. Board of Public Instruction*, 5 Cir, 1972, 465 F.2d 878, *cert. denied*, 1973, 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (*Ellis II*).

[6] No physical barriers, insuperable distances, or demographic obstacles prevent the assignment of students in ways that would alleviate the segregation still present in the DeSoto Parish schools. We do not believe that the board has shown that the present situation represents the maximum desegregation practically achievable. *United States v. Seminole County Sch. Dist. supra*, 553 F.2d at 995. These factors distinguish the situations in which this Court approved plans that retained one-race schools. For example, in *Stout v. Jefferson County Bd. of Educ.* 5 Cir., 1976, 537 F.2d 800, we approved a plan that left three elementary schools racially homogenous on findings that this resulted from "geography and demography alone," and that the schools served only a relatively small number of students in a system that provided all students with desegregated high schools; in *Carr v. Montgomery County Bd. of Educ.*, 1974, M.D.Ala., 377 F.Supp. 1123, 1132, *aff'd*, 5 Cir., 511 F.2d 1374, *cert. denied*, 1975, 423 U.S. 986, 96 S.Ct. 394, 46 L.Ed.2d 303, we approved the retention of a small number of predominantly black elementary schools on findings that residential patterns, not discrimination, caused the racial imbalance, that no alternative could effectively achieve desegregation, and that every student would attend a completely integrated high school.

In DeSoto, by contrast, over 83 percent of the black pupils attend all-black schools, and, under the current plan, will never be exposed to a desegregated school. There is no entrenched residential segregation, and several of the all-black schools are located in close proximity to schools originally designated for whites. Such factors indicate, and the Government urges that an alternative plan would be relatively easy to implement. "In the conversion from dual school systems based on race to unitary school systems, the continued existence of all-black or virtually all-black schools is unacceptable where

reasonable alternatives exist." *Boykins v. Fairfield Bd. of Educ.*, 5 Cir., 1972, 457 F.2d 1091, 1095, *quoted* in *Lemon v. Bossier Parish School Board*, 5 Cir., 1978, 566 F.2d 985, 987.

The board's response is to repeat the refrain it has sung since 1968: any alternative measures that promise to increase the amount of desegregation will lead to white flight and the "resegregation" of the schools. This argument must fail. It is the law in the Supreme Court and in this Circuit that white flight "cannot [be] . . . accepted as a reason for achieving anything less than complete uprooting of the dual public school system." *United States v. Scotland Neck City Bd. of Educ.*, 1972, 407 U.S. 484, 491, 92 S.Ct. 2214, 2218, 33 L.Ed.2d 75; *Lee v. Macon County Bd. of Educ.*, 5 Cir., 1972, 465 F.2d 369.[25]

[7] This not to say that a school board or Court must ignore a likely danger of an exodus of white students from a school system. "[I]n choosing between various *permissible* plans a chancellor may . . . elect one calculated to minimize white boycotts. . . . He may not refuse to adopt a permissible plan and elect or confect one which preserves a dual system because of such fears." *Stout v. Jefferson County Bd. of Educ.*, 1976, 5 Cir., 537 F.2d 800, at 802. The 1970 plan, as modified by the District Court's 1976 order, was devised with the fear of white flight as a paramount consideration. The plan preserves a dual system and cannot be retained over a more successful approach because of this fear.

[25] The reason for this rule reveals the importance of enforcing it rigorously. "White flight is an expression of opposition by individuals in the community to desegregation of the school system. . . . From the inception of school desegregation litigation, accommodation of opposition to desegregation by failing to implement a constitutionally necessary plan has been impermissible." *Morgan v. Kerrigan*, 1 Cir., 1976, 530 F.2d 401, 420, *cert. denied*, 1977, 426 U.S. 935, 96 S.Ct. 2648, 49 L.Ed.2d 386.

Faculty Assignments

[8] The Government urges that the District Court erred in declining to insist that the school board comply immediately with the *Singleton* requirements that the faculty of each school reflect the systemwide racial ratio of faculty members and that teachers accept reassignment as a condition of continued employment. We agree with the Government. The District Court found that sufficient gradual improvement had taken place since 1970 to make "strict mathematical ratios" unnecessary and left the school board to continue as before, with the hope for more rapid improvement in the future. This approach, particularly in a school system marked by the consistent failure of mild measures, ignores the fact that *Singleton* is a command based on the Constitution, not an optional set of guidelines. We have long since rejected as ineffective the standard apparently adopted by the District Court, that desegregation progress with "all deliberate speed." *Alexander v. Holmes County Bd. of Educ.*, 1969, 396 U.S. 19, 90 S.Ct. 29, 24 L.Ed.2d 19 (per curiam).

The District Court's factual premise for its denial of further relief as to the faculty is also open to question. The statistics and testimony as to the present situation

do not support an expectation of more rapid improvement in the future or the swift attainment of a unitary faculty. While there has been some improvement in faculty integration, the pace is slow and the degree slight.[26] In the 1975-76 school term, 70 percent of the white faculty taught in traditionally white schools, and 76 percent of the black teachers were assigned to traditionally black schools. Recent reports submitted by the school board reveal no substantial improvement.[27] In addition to the school board's admitted failure to condition employment on teachers' willingness to accept reassignment, and failure to initiate reassignments, the record contains evidence that when reassignment was required by the closing of schools, most of the white teachers were reassigned to traditionally white schools and

[26] In 1970-71, and in 1975-76, the following faculty distribution existed:

	1970-71			1975-76		
Former Black Schools						
	B	W	%B	B	W	%B
All Saints	16	2	89	13	5	72
DeSoto	28.5	6	83	27	10	73
Johnson	26.5	3	90	30	11	73
Logansport-Rosenwald	15	7	68	17	12	59
Second Ward	37	3	93	33	9	79
Former White Schools						
	B	W	%B	B	W	%B
Logansport	8	21	28	8	23	26
Mansfield Elem.	8	21.5	27	9	24	27
Mansfield H. S.	6	18.5	24	6	22	21
Pelican	6	10	38	4	13	24
Stanley	5	10	33	5	11	31
Stonewall	5	10	33	6	17	26

[27] The figures for faculty distribution in the 1976-77 and 1977-78 school terms are included in Appendix B.

the blacks to schools designated for black students.[28] The record also indicates that new teachers have not been assigned in ways that would increase desegregation; between the 1969-70 and 1975-76 school terms, 57 percent of the newly hired white teachers were assigned to formerly white schools, and 92 percent of the newly hired black teachers were assigned to traditionally black schools.[29]

[9] The school board urges that if they are required to implement the *Singleton* requirements without delay, a form of white flight among the faculty will result. Pointing to the difficulties DeSoto Parish faces in competing with nearby, wealthier school systems in attracting and keeping qualified teachers, the board asserts that measures such as reassignment to achieve compliance with *Singleton* will lead to large numbers of faculty resignations. The fear of faculty resistance to desegregation measures, like the fear of community resistance, cannot be allowed to defeat an effective desegregation plan in favor of a plan that is unlikely to achieve a unitary system.

III.

Remedy

[10] The 1970 plan, with the 1976 order revising the bus routes, has failed to desegregate this school system, failed even to achieve the modest projected results, and is therefore constitutionally inadequate. The District Court must order further relief. We now turn to the

[28] Tr. at 108-113.

[29] McLaren deposition at 154-56.

question of an appropriate remedy. The Government's uncontradicted assertion is that several alternatives could easily be implemented to begin disestablishing the one-race schools. The board's major objection to the Government's proposals, the fear of white flight, is not sufficient to justify a refusal to make such an attempt. On remand, the parties and the Court are directed to devise and implement a comprehensive plan that, by whatever reasonable means the District Court deems appropriate, will end the segregated condition of this school system. *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 5 Cir., 1972, 467 F.2d 142, 152-53 (en banc), *cert. denied*, 1973, 413 U.S. 922, 93 S.Ct. 3052, 37 L.Ed.2d 1044. In formulating such a plan, the District Court's equitable powers are sufficiently flexible to shape its decrees in a fashion that will minimize dislocations and burdens on the educational process. *Milliken v. Bradley, supra*, 433 U.S. at 280 n. 15, 97 S.Ct. at 2757, 53 L.Ed.2d at 756.

While we cannot and do not wish to require any specific plan, there are several steps that must be taken to satisfy the constitutional requirements for desegregation.

Student Assignments

[11] First, the attendance zones cannot remain as presently drawn. Geographic zones used as a method of student assignment cannot be retained where they impede the desegregation process; indeed, a desegregation plan incorporating attendance zones is insufficient unless the boundaries are drawn to achieve the "greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis v. Board of School Commissioners*, 1971, 402 U.S. 33, 37, 91 S.Ct. 1289, 1292, 28 L.Ed.2d 577, 581; *Swann v. Board of Educ., supra*, 402 U.S. at 28-29, 91 S.Ct. 1267, 28 L.Ed.2d at 573-74; *Ellis v. Board of Public Instruction*, 5 Cir., 1972, 465 F.2d 878, *cert. denied*, 1973, 410 U.S. 966, 93 S.Ct. 1438, 35 L.Ed.2d 700 (*Ellis II*); *Henry v. Clarksdale Municipal Separate Sch. Dist.*, 5 Cir., 1969, 409 F.2d 682, *cert. denied*, 396 U.S. 940, 90 S.Ct. 375, 24 L.Ed.2d 242. The zones should be redesigned to discharge this affirmative duty. "The process of desegregation . . . is often one of trial and error; if one set of zones proves ineffective, then another must be drawn and, if necessary, another, or some yet different approach be tried." *United States v. Hinds County Sch. Bd.*, 5 Cir., 1977, 560 F.2d 1188, 1191.

[12] Second, we believe that the provision by which all students living outside zoned areas who can furnish their own transportation are allowed to attend the school of their choice must be eliminated. We agree with the Government's argument that such a provision is similar to the "free-transfer" practice invalidated in *Monroe v. Board of Commissioners*, 1968, 391 U.S. 450, 88 S.Ct. 1700, 20 L.Ed.2d 733, and to the free choice policy held unacceptable in *Green v. County Sch. Bd., supra*, 391 U.S. 430, at 439-41, 88 S.Ct. 1689, at 1694-96, 20 L.Ed.2d 716, at 724-26. Like a free transfer or free choice provision, the option allows DeSoto students to avoid attending the schools to which they are assigned according to the bus routes; it is an "implicit invitation

[to return] . . . to the comfortable security of the old, established discriminatory pattern." *Monroe, supra*, 391 U.S. at 459, 88 S.Ct. at 1705, 20 L.Ed.2d at 739. *Green* and *Monroe* state the principle that governs here: "if it cannot be shown that such a [free choice or free transfer option] will further rather than delay conversion to unitary, nonracial, nondiscriminatory school system, it must be held unacceptable." 391 U.S. at 459, 88 S.Ct. at 1705, 20 L.Ed.2d at 739. No such showing is possible in this case, and the free choice option cannot remain in a constitutionally valid plan.[30]

[13,14] More specific remedial steps must await further factual development by the District Court.[31] At

[30] A freedom of choice plan has on occasion been held sufficient. E.g., *Singleton v. Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F.2d 1211, 1221 (No. 28361, St. John the Baptist Parish, La.). In this case, the Court used such a plan as an alternative to requiring the division of a small number of white students among five schools in one part of a predominantly black school system, a part isolated from the integrated remainder of the system by the Mississippi River, a formidable geographic barrier. This case was later distinguished and a free choice plan disallowed on a basis that applies here as well: "[t]he . . . School Board has yet to demonstrate objectively its will to operate this system in a manner calculated to remedy past discriminatory practices and achieve unitary status. . . . If and when this School Board removes itself from the shadow of contempt, the District Court may then consider whether a racially neutral freedom of choice plan could be a benefit in bringing about a unitary system. . . . That day has not yet arrived." *United States v. Wilcox County Bd. of Educ.*, 5 Cir., 1974, 494 F.2d 575, 580, *cert. denied*, 419 U.S. 1031, 95 S.Ct. 512, 42 L.Ed.2d 306.

[31] The Government urges that even as modified, the bus routes still operate to maintain segregation in the schools, or at least do not affirmatively aid desegregation. On the remand, the District Court should direct the parties to reconsider the bus routes as one part of the comprehensive new desegregation plan required.

As part of this reconsideration, we again draw the school

this stage, we can only conclude that effective methods are available. In some areas of the parish, such as the city of Mansfield, zones that assign children to the schools nearest their homes offer a promise of increased integration. In other areas, where schools traditionally serving separate races are located within one and one-half miles of each other, pairing would appear to be a feasible and effective remedy that would not unduly increase the travel burdens on the students.[32] Although pairing is not required as a remedy of "first resort," "where all-black or virtually all-black schools remain under a zoning plan, but it is practicable to desegregate some or all of the black schools by using the tool of pairing, *the tool must be used.*" *Flax v. Potts*, 5 Cir., 1972, 464 F.2d 865, 868, *cert. denied*, 409 U.S. 1007, 93 S.Ct. 433, 34 L.Ed.2d 299, *quoting Allen v. Board of Public Instruction*, 5 Cir., 1970, 432 F.2d 362, 367, *cert. denied*, 1971, 402 U.S. 952, 91 S.Ct. 1609, 29 L.Ed.2d 123. [Emphasis added].

board's attention to the students from Texas who attend school in DeSoto Parish. They must be assigned to schools in a fashion that satisfies not only the requirement of a desegregated bus system, but also the provision of the 1970 decree, common to most desegregation plans, providing that:

If the school district grants transfers to students living in the district for their attendance at public schools outside the district, or if it permits transfers into the district of students who live outside the district, it shall do so on a non-discriminatory basis, except that it shall not consent to transfers where the cumulative effect will reduce desegregation in either district or reinforce the dual school system.

[32] See note 8, *infra*, for a description of the schools and the distances between them. We are cognizant of the difficulties presented by the Stonewall and Second Ward High Schools, which are located 12.8 miles apart.

Faculty Assignments

[15] We have held erroneous the District Court's refusal to grant further relief from the board's admitted decision not to comply with *Singleton*. While we share the Court's dislike for ordering "strict mathematical ratios," their effectiveness as a starting point in eliminating the vestiges of segregation in both student and faculty assignments is beyond question. Moreover, *Singleton* does not require that such ratios be maintained permanently; rather, it "contemplates an initial reassignment so that the racial ratio at every school reflects the systemwide ratio, followed by the utilization of a non-discriminatory hiring, firing, and assignment policy thereafter." *United States v. Wilcox County Bd. of Educ.*, 5 Cir., 1974, 494 F.2d 575, 580, *cert. denied*, 419 U.S. 1031, 95 S.Ct. 512, 42 L.Ed.2d 306. In this case, the board never began to comply with these requirements. We remand with instructions that *Singleton* is to be enforced in accordance with its terms, without further delay.

The order of the District Court is reversed insofar as it denied the relief sought. The case is remanded with instructions that the District Court adopt and implement a comprehensive plan to eliminate the one-race schools in DeSoto Parish and bring the system to the unitary status demanded by the Constitution.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

APPENDIX A to follow.

APPENDIX A

DeSoto Parish School System Student Enrollment By Race

1970-71 thru 1977-78

School	Grades*	1970-71				1971-72				1972-73			
		W	B	T	%B	W	B	T	%B	W	B	T	%B
All Saints HS	1-12	0	317	317	100%	0	318	318	100%	0	274	274	100%
DeSoto HS	7-12	0	665	665	100%	1	688	689	99%	0	654	654	100%
Johnson Elem. School	1-6	0	828	828	100%	2	864	866	99%	0	891	891	100%
Logansport HS	1-12	467	41	508	8%	465	25	490	5%	483	27	510	5%
Logansport Rosenwald HS	1-12	0	462	462	100%	0	471	471	100%	0	451	451	100%
Mansfield Elem. School	1-7	430	225	655	34%	484	189	673	28%	505	181	686	26%
Mansfield HS	8-12	333	93	426	22%	325	103	428	24%	378	120	498	24%
Pelican HS	1-12	132	114	246	46%	120	102	222	46%	124	104	228	46%
Second Ward HS	1-12	0	846	846	100%	0	791	791	100%	0	736	736	100%
Stanley HS	1-12	218	46	264	17%	222	38	260	15%	226	33	259	13%
Stonewall HS	1-12	211	63	274	23%	256	58	314	18%	294	62	356	17%
Total		1791	3700	5491	67%	1875	3647	5522	66%	2010	3533	5543	64%

APPENDIX A—Continued

DeSoto Parish School System Student Enrollment By Race
1970-71 thru 1977-78—Continued

School	Grades*	1973-74 W	B	T	%B	1974-75 W	B	T	%B	1975-76 W	B	T	%B	1977-78 †W	B	T	%B
All Saints HS	K-12	0	270	270	100%	3	237	240	99%	7	242	249	97%	*32	186	218	85%
DeSoto HS	7-12	0	672	672	100%	0	652	652	100%	0	700	700	100%	0	610	610	100%
Johnson Elem. School	K-6	0	932	932	100%	0	929	929	100%	0	895	895	100%	0	769	769	100%
Logansport HS	K-12	509	31	540	6%	540	47	587	8%	563	43	606	7%	579	103	682	15%
Logansport Rosenwald HS	K-12	0	470	470	100%	0	442	442	100%	0	439	439	100%	0	351	351	100%
Mansfield Elem. School	K-7	531	204	735	28%	561	198	759	26%	616	218	834	26%	574	276	850	33%
Mansfield HS	8-12	387	126	513	25%	371	134	505	27%	374	142	516	28%	380	157	537	29%
Pelican HS	1-12	121	98	219	45%	119	102	221	46%	112	97	209	46%	**33	155	188	82%
Second Ward HS	K-12	0	747	747	100%	0	718	718	100%	0	695	695	100%	0	592	592	100%
Stanley HS	K-12	226	36	262	14%	244	32	276	12%	241	25	266	9%	251	91	342	27%
Stonewall HS	K-12	347	75	422	18%	405	74	479	15%	403	68	471	14%	420	126	546	23%
Total		2121	3661	5782	63%	2243	3565	5808	61%	2316	3564	5880	61%	2269	3416	5685	60%

†The Court was unable readily to find similar figures for the 1976-77 school year in the record.
*All Saints—Pelican Elementary School (after pairing)
**Pelican—All Saints High School (after pairing)

APPENDIX B to follow.

APPENDIX B

DeSoto Parish School System Faculty At Each School By Race
1970-71 thru 1977-78

School	1970-71 B	W	T	%B	1971-72 B	W	T	%B	1972-73 B	W	T	%B
All Saints HS	16	2	18	89%	16	4	20	80%	15	4	19	79%
DeSoto HS	28.5	6	34.5	83%	27	9	36	75%	26	9	35	74%
Johnson Elem. School	26.5	3	29.5	90%	25	6	31	81%	24	8	32	75%
Logansport HS	8	21	29	28%	8	22	30	27%	7	22	29	24%
Logansport Rosenwald HS	15	7	22	68%	18	6	24	75%	18	6	24	75%
Mansfield Elem. School	8	21.5	29.5	27%	9	20	29	31%	9	20	29	31%
Mansfield HS	6	18.5	24.5	24%	6	18	24	25%	6	20	26	23%
Pelican HS	6	10	16	38%	6	10	16	38%	6	9	15	40%
Second Ward HS	37	3	40	93%	34	7	41	83%	31	9	40	78%
Stanley HS	5	10	15	33%	5	10	15	33%	5	10	15	33%
Stonewall HS	5	10	15	33%	5	10	15	33%	5	13	18	28%
Special Teachers	3	3	6	50%	4	4	8	50%	5	8	13	38%
Assistant Teachers	0	0	0		1	2	3	33%	4	3	7	57%
Total	164	115	279	59%	164	128	292	56%	157	138	302	52%

APPENDIX B—Continued

DeSoto Parish School System Faculty At Each School By Race 1970-71 thru 1977-78—Continued

School	1973-74 B	W	T	%B	1974-75 B	W	T	%B	1975-76 B	W	T	%B
All Saints HS	16	4	20	80%	14	4	18	78%	13	5	18	72%
DeSoto HS	27	10	37	73%	27	9	36	75%	27	10	37	73%
Johnson Elem. School	30	10	40	75%	30	10	40	75%	30	11	41	73%
Logansport HS	8	22	30	27%	8	23	31	26%	8	23	31	26%
Logansport Rosenwald HS	21	7	28	75%	21	8	29	72%	17	12	29	59%
Mansfield Elem. School	9	22	31	29%	9	22	31	29%	9	24	33	27%
Mansfield HS	6	21	27	22%	6	21	27	22%	6	22	28	21%
Pelican HS	6	11	17	35%	6	11	17	35%	4	13	17	24%
Second Ward HS	33	9	42	79%	33	9	42	79%	33	9	42	79%
Stanley HS	5	11	16	31%	5	11	16	31%	5	11	16	31%
Stonewall HS	5	15	20	25%	6	16	22	27%	6.	17	23	26%
Special Teachers	3	4	7	43%	3	6	9	33%	4	5	9	44%
Total	169	146	315	54%	168	150	318	53%	162	162	324	50%

APPENDIX B—Continued

DeSoto Parish School System Faculty At Each School By Race 1970-71 thru 1977-78—Continued

School	1976-77 B	W	T	%B	1977-78 B	W	T	%B
All Saints HS	*5	5	10	50%	7	5	12	58%
DeSoto HS	24	9	33	73%	26	9	35	74%
Johnson Elem. School	26	7	33	79%	27	7	34	77%
Logansport HS	8	24	32	22%	10	26	36	28%
Logansport Rosenwald HS	15	7	22	68%	16	8	24	67%
Mansfield Elem. School	10	25	35	29%	12	26	38	32%
Mansfield HS	6	22	28	21%	7	22	29	24%
Pelican HS	**5	8	13	38%	5	8	13	38%
Second Ward HS	27	7	34	79%	27	10	37	73%
Stanley HS	6	12	18	34%	6	14	20	30%
Stonewall HS	7	19	26	27%	8	20	28	28%
Special Teachers	5	3	8	62%	4	6	10	40%
Total	144	148	302	50%	155	161	316	50%

*All Saints—Pelican Elementary School (after pairing)
**Pelican—All Saints High School (after pairing)

GEE, Circuit Judge (specially concurring):

I concur in the opinion and write briefly and only to note how my reading of *Brinkman*[1] bears on this case. There can be little doubt that the drastic and unfortunate means of "bussing for racial balance" can be required in a case where the existing imbalance sought to be corrected results from present intent—or the remaining effects of past intent—to discriminate by race on the part of those controlling school policy. Mere statistical imbalance by race does not, in my view, justify such a remedy. But where extreme imbalance exists, as here and as in *Lee*,[2] and where, as here and as in *Lee*, it has persisted essentially unbroken by milder remedies since the abolition of *de jure* segregation, it is powerful evidence that such an intent either presently exists or persists undisturbed from the older dispensation. If sufficiently extreme, at least where residential patterns are not polarized, as here, it may be overwhelming evidence of such an intent presently operating. I find it overwhelming here, as in *Lee*. I therefore concur, believing that *Brinkman*, which incorporates the language cited at footnote 20 above, is not at war with our holding.

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[1] *Dayton Board of Education v. Brinkman*, 433 U.S. 406, 97 S.Ct. 2766, 53 L.Ed.2d 851 (1977).

[2] *Lee v. Demopolis City School System*, 557 F.2d 1053 (5th Cir. 1977).

Appendix C

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 76-3471

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

VERSUS

DESOTO PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

ON PETITION FOR REHEARING

(August 2, 1978)

Before BROWN, Chief Judge, MORGAN and GEE, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

Chief Judge

Appendix D

UNITED STATES COURT OF APPEALS

Fifth Circuit

Office of the Clerk

August 17, 1978

Mr. John F. Ward, Jr.
Attorney at Law
1111 So. Foster St.
Suite C, P.O. Box 65236
Baton Rouge, LA 70896

No. 76-3471—U.S.A. v. DeSoto Parish School Board, Et Al.

MANDATE STAYED TO AND INCLUDING September 16, 1978

Dear Counsel:

The court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore

will not be routinely prepared by this office (38LW 3502).

A copy of the opinion, judgment and denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this cause.

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

By /s/ _____
Deputy Clerk

enc: (LETTER ONLY)
cc: Mr. Brian K. Landsberg

Appendix E

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 76-3471

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

VERSUS

DESOTO PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

---

ORDER:—

IT IS ORDERED that appellant's motion to vacate the order of August 17, 1978 granting stay of mandate pending application to the Supreme Court for writ of certiorari is DENIED.

/s/ John R. Brown
CHIEF JUDGE

B-6398, 9-78

Supreme Court, U. S.
FILED
OCT 28 1978
MICHAEL RODAK, JR., CLERK

No. 78-458

In the Supreme Court of the United States

OCTOBER TERM, 1978

DE SOTO PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-458

DE SOTO PARISH SCHOOL BOARD, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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1. This litigation began in January, 1967, when the United States filed suit seeking to desegregate the public schools in DeSoto Parish, Louisiana. In 1970, after protracted litigation, the district court approved a desegregation plan. In 1975, the United States filed a motion for further relief, alleging that the plan had failed to eliminate the dual school system and asking the district court to order and implement comprehensive modifications. Specifically, the United States claimed that under the 1970 plan the school board still maintained racially identifiable schools, failed to comply with the faculty assignment requirements established in *Singleton* v. *Jackson Municipal Separate School District*, 419 F. 2d 1211 (5th Cir. 1969), and continued to operate a segregated school bus system (Pet. App. 28, 33).

In ruling on the government's motion, the district court noted that five of the eleven schools now in operation in DeSoto Parish were originally constructed for blacks prior to the 1970 desegregation order. The court found that four of these five schools still had a student body which was 100 percent black, and that the fifth school's student body was 97 percent black. In the court's view, the school board's continued operation of a segregated student transportation system had been "the primary contributor to the one-race schools" (Pet. App. 18). While finding that the school board had not achieved the racial balance in faculty assignments required by *Singleton*, the court observed that gradual improvement had been made and expressed the hope that more rapid improvement would come in the future (Pet. App. 21-22). The court therefore granted the government's motion for supplemental relief only insofar as it sought dismantling of the dual transportation system and denied the motion in all other respects (Pet. App. 22).

The court of appeals affirmed as to the limited relief granted, reversed as to the denial of all other relief sought, and remanded the case to the district court with instructions to adopt and implement a comprehensive plan to eliminate the one-race schools and bring the system into a unitary status (Pet. App. 58).

Holding clearly erroneous the district court's finding that the racial composition of the schools was attributable "primarily" to the school board's retention of the dual transportation system (Pet. App. 42), the court of appeals found that the record was "replete with evidence" that other aspects of the 1970 plan, including the existing attendance zones and a "free choice" option, had also substantially contributed to the "continuing and extreme" racial imbalance in the schools (Pet. App. 42-47). The court noted that virtually no white students were zoned to

attend formerly black schools, a result achieved by "gerrymandering" around racially homogenous neighborhoods; and that the "free choice" option, by permitting almost all white students to attend the school of their choice, had resulted in only 13 white students attending formerly black schools from 1970-1976 (Pet. App. 45-57). The court therefore concluded that merely modifying the bus routes would not succeed in altering the racial composition of the schools (Pet. App. 43, 37).

Moreover, the court of appeals noted that, after five years of operation under a desegregation decree, the faculties of the traditionally black schools ranged from 59 percent to 79 percent black, while the faculties of the six traditionally white schools ranged from 71 percent to 81 percent white, although the systemwide ratio of black to white teachers was fifty-fifty (Pet. App. 32). The court emphasized that, contrary to the characterization of the district court, the reports submitted by the school board indicated no substantial improvement in faculty integration (Pet. App. 52).

Accordingly, the court of appeals required the district court to grant further relief, as requested by the United States (Pet. App. 53). Specifically, the court held that the existing attendance zones must be redesigned to achieve the "greatest possible degree of actual desegregation" (Pet. App. 54-55), and that the "free choice" option must be eliminated (Pet. App. 55). Further, the court of appeals instructed the district court to enforce *Singleton*, "in accordance with its terms, without further delay" (Pet. App. 58).

2. The decision of the court of appeals is correct. This Court held in *Swann* v. *Mecklenburg Board of Education*, 402 U.S. 1, 26 1971, that "in a system with a history of segregation the need for remedial criteria of sufficient

specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition." The continued existence of all-black schools previously so designated under a dual system requires close judicial scrutiny and places the burden on school board officials to establish that the racial composition of these schools is not a product of past or present discrimination by school authorities (*ibid.*).

In this case, all five of the existing schools which were racially identifiable prior to the 1970 desegregation decree remain so today. The evidence fully supported the court of appeals' conclusion (Pet. App. 42) that the existing attendance zones and the "free choice" option, as well as the segregated transportation system, had substantially contributed to the "extreme" racial imbalance in the schools. Moreover, even the district court recognized (Pet. App. 21-22) that the school board had not achieved the *Singleton* requirement that the faculty of each school reflect the systemwide racial ratio for faculty members; as the court of appeals emphasized, the *Singleton* rule is a command based on the Constitution, not an optional set of guidelines (Pet. App. 51). In this context, the court of appeals properly required the district court to order comprehensive relief designed to eliminate "all vestiges of state-imposed segregation." *Milliken* v. *Bradley*, 433 U.S. 267, 290 (1970), quoting *Swann, supra*, 402 U.S. at 15.[1]

[1]Here, therefore, as in *Lee* v. *Demopolis City School Board*, 557 F. 2d 1053 (5th Cir. 1977), certiorari denied, 434 U.S. 1014 (1978), the court of appeals' order is not inconsistent with the procedures set forth in *Dayton Board of Education* v. *Brinkman*, 433 U.S. 406, 420 (1977). See Pet. App. 43, n. 20. The court of appeals exactingly tailored "the scope of the remedy" to fit "the nature and extent of the constitutional violation," *Brinkman, supra*, 433 U.S. at 420, quoting *Milliken* v. *Bradley* 418 U.S. 717, 738 (1974).

The court of appeals' ruling is consistent with other post-*Swann* decisions in similar cases; this Court has repeatedly declined further review in these cases. See, *e.g.*, *Ellis* v. *Board of Public Instruction of Orange County, Florida*, 465 F. 2d 878 (5th Cir. 1972), certiorari denied, 410 U.S. 966 (1973); *Hereford* v. *Huntsville Board of Education*, 504 F. 2d 857 (5th Cir. 1974), certiorari denied, 421 U.S. 913 (1975); *United States* v. *Texas Education Agency*, 512 F. 2d 896 (5th Cir. 1975), certiorari denied, 423 U.S. 837 (1975); *United States* v. *Columbus Municipal Separate School District*, 558 F. 2d 228 (5th Cir. 1977), certiorari denied, 434 U.S. 1013 (1978); *Lee* v. *Demopolis City School System*, 557 F. 2d 1053 (5th Cir. 1977), certiorari denied, 434 U.S. 1014 (1978).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

OCTOBER 1978

DOJ-1978-10